

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**In re: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION**

)
) **MDL No. 1456**
) **Master File No. 01-CV-12257-PBS**
) **Subcategory Case. No. 06-11337**
)

) **Hon. Patti B. Saris**
)

THIS DOCUMENT RELATES TO:

)
)
) *United States of America ex rel. Ven-A-Care of the*
) *Florida Keys, Inc., et al. v. Dey, Inc., et al.,*
) *Civil Action No. 05-11084-PBS; State of California ex*
) *rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Abbott*
) *Laboratories, Inc., et al., Civil Action No. 1:03-cv-*
) *11226-PBS*

**DECLARATION OF SARAH L. REID IN SUPPORT OF DEY DEFENDANTS'
OPPOSITION TO THE UNITED STATES' MOTION FOR AN ORDER
TO PRODUCE MICHAEL T. RICKS FOR RULE 30(a)(2)(B)
DEPOSITION AND CALIFORNIA'S CROSS-MOTION AND IN SUPPORT
OF DEY'S CROSS-MOTION FOR A PROTECTIVE ORDER**

SARAH L. REID declares, pursuant to 28 U.S.C. § 1746, that:

1. I am a member of the law firm of Kelley Drye & Warren LLP, counsel to Dey, Inc., Dey L.P., Inc., and Dey L.P. (collectively "Dey"). I am admitted to practice law in the State of New York and have been admitted *pro hac vice* in this action.

2. I make this Declaration in support of Dey's Opposition to the United States' Motion for an Order to Produce Michael T. Ricks for 30(a)(2)(B) Deposition and California's Cross-Motion and in Support of Dey's Cross-Motion for a Protective Oder.

3. I make this declaration from my own personal knowledge of the facts and circumstances set forth herein. The source of my knowledge is my review of Kelley Drye & Warren LLP's files with respect to this litigation, including my review of the documents annexed as exhibits hereto.

4. Attached hereto as Exhibit A is a true and correct copy of a “Weekly Sales Recap” from Michael T. Ricks, dated April 15, 1994, and labeled DL-TX-0109402.

5. Attached hereto as Exhibit B is a true and correct copy of a “District Sales Manager’s Weekly Recap Report” from Michael T. Ricks, dated March 22, 1996, and labeled DL-TX-0116985.

6. Attached hereto as Exhibit C is a true and correct copy of a Dey organizational chart, labeled DEY-LABS-0281930 to DEY-LABS-0281931.

7. Attached hereto as Exhibit D is a true and correct copy of a call note from Michael T. Ricks, dated December 21, 1995, and labeled DL-TX 0113743.

8. Attached hereto as Exhibit E is a true and correct copy of an April 5, 2005 article from the Denver Post.

9. Attached hereto as Exhibit F is a true and correct copy of a September 9, 2005 article from the Denver Post.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 6, 2008.

/s Sarah L. Reid
SARAH L. REID

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on November 6, 2008, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Sarah L. Reid

Sarah L. Reid

EXHIBIT A

WEEKLY SALES RECAP

Representative: Michael T. Ricks, Sr.Territory: 17Week Ending: 4/15/94

HOSPITAL	8
RT	9
NPH	9
MD	
PURCH	
E.R.	1
XX	
FEDERAL	1
WHOLESALE	
HOMECARE	
CHAIN DRUG	1
RET BUYING GRPS	
GENERIC DIST	
MD (OFFICE)	
OTHER	
TOTAL WEEK CALLS	

NEW PRODUCT SALES UPDATE:

Dura Pharmaceutical is promoting a six hour half life which only requires one treatment aday.

Salen & Hanburys-Servent has a study out show a comparsion of Salmeterol with Albuterol in the treatment of mild to moderate asthma

OTHER ISSUES:

After talking with David Schulte of Kaiser Permanente, I get the impression

that he is still upset about how he was treated when he placed that order back in Jan.

I spoke with a retail pharmacist and she indicate that she do not see any movement of Albuterol or Cromolyn.

SUGGESTIONS/COMMENTS:

OTHER ACTIVITIES: (Account for each day of the week other than general sales calls, i.e. vacation, sick time, conventions etc.)

EXHIBIT B

DISTRICT SALES MANAGER'S WEEKLY RECAP REPORTREPRESENTATIVE: MICHAEL T. RICKS, SR.DISTRICT: 21WEEK ENDING: 03/23/98**NEW DISTRIBUTION/SALES UPDATE:**

1. My chain pharmacies are stocked with Warrick and Zenith in their Warehouse.
2. Arizona State Hospitals (Min. Multi-State) are having some problems getting the correct pricing on our MDI.
3. ABCO signed off on the pricing contract and agreed to use our MD albuterol as well.
4. Glaxo has offered Columbia a deal on their 17g MDI at \$2.00 a unit
5. Public Health price for Ventolin MDI is \$2.73 and Proventil MD is \$3.46
6. The Good Samaritan (VHA) agreed to switch back to our UD albuterol and use our MDI and MD.

COMPETITIVE INFORMATION/MARKET TRENDS: (I.E., TRADE CLASS, PRODUCTS)**PROMOTIONAL UPDATES: (I.E., MARKETING PROMOTIONS, MANAGED CARE PULL-THROUGH, INSIDE SALES PROJECTS, PROMOTIONS SET)****COMMENTS/SUGGESTIONS:**

<u>CALL RECAP</u>	
HOSPITALS:	15
RT	3
RPh	3
MD	
PURCHASING	9
NURSING	1
OTHER	
WHOLESALE /RGD	
PHYSICIAN OFFICE	
RETAIL PHARMACIES	12
CHAIN, G.P.O., BUYING GROUP	
HEADQUARTERS	1
DME /HOMECARE	2
OTHER (SPECIFY)	
TOTAL	30

<u>ACTIVITY RECAP (DAYS)</u>	
FIELD	5
MEETING	
CONVENTIONS	
VACATION	
HOLIDAY	
SICK	
OTHER (SPECIFY)	
TOTAL	5

<u>ITINERARY FOR FOLLOWING MONTH*</u>	
DATE	CYCLE
WEEK ENDING	3/1998
WEEK ENDING	
WEEK ENDING	
WEEK ENDING	
WEEK ENDING	
*TO BE FILLED OUT THIRD WEEK OF EACH MONTH	
FUTURE FIELD SCHEDULE CHANGES:	

DL-TX-0116985

EXHIBIT C

REGION/DISTRICT/STATE**REGION I / ~~Ross Uhl~~**DISTRICT 1 / Estelle Halchak

Connecticut

Massachusetts

Maine

New Hampshire

Rhode Island

Vermont

DISTRICT 2 / Open

New York State

DISTRICT 3 / Lou Barricelli

New York City/Long Island

DISTRICT 4 / Open

Delaware

New Jersey

DISTRICT 8 / Rich Speno

Georgia

North Carolina

South Carolina

DISTRICT 9 / Alberto Hoyo

Florida

Puerto Rico

REGION II / Jim BucaricDISTRICT 5 / Open

Pennsylvania

DISTRICT 6 / Kevin Shawver

Ohio

West Virginia

DISTRICT 7 / Samuel Parker

Washington DC

Kentucky

Maryland

Virginia

DISTRICT 10 / Joe HamptonArkansas ~~Alabama~~

Tennessee

DISTRICT 11 / Lori Harless

Indiana

Michigan

DISTRICT 12 / Mike Wilson

Illinois

Wisconsin

DISTRICT 13 / Roy Barnes~~Arizona~~ Arkansas

Louisiana

Mississippi

REGION III / Rick UppDISTRICT 14 / Jim Gist

Texas

DISTRICT 15 / Kevin Biggs

Kansas

Missouri

Oklahoma

DISTRICT 16 / Dave Dutton

Iowa

Minnesota

North Dakota

Nebraska

South Dakota

DISTRICT 17 / Michael Ricks

Arizona

Colorado

New Mexico

Utah

DISTRICT 18 / Jim Saunders

Alaska

Idaho

Montana

Oregon

Washington

Wyoming

DEY-LABS-0281930

Region/District State
Page 2

REGION/DISTRICT/STATE

REGION III (Cont)

Ernie Tipton
DISTRICT 19 / Debt Collector

California, *No.*

Nevada

DISTRICT 20 / Steve Robertson

California, *So.*

Hawaii

EXHIBIT D

DEY**ACCOUNT CALL REPORT**DISTRICT: 17
DATE: 12/21/85

ACCOUNT NAME: <u>St Josephs Hospital</u>	TYPE: <u>Hospital</u>
CITY/STATE: <u>Phoenix, AZ</u>	GROUP: <u>HSCA</u>

PRODUCTS PURCHASING:

ACETYLSTYRENE ☒ ALBUTEROL ☒ CROMOLYN ☒ SODIUM CHLORIDE ☒ OTHER ☐ Isoetharine and Metaproterenol

PRODUCTS NOT PURCHASING: _____

PRIMARY SUPPLIER: Cardinal Health SECONDARY SUPPLIER: _____

DIRECT ☐ INDIRECT ☒

ESTIMATED ANNUAL VOLUME: 45,600.00 ESTIMATED RANK: _____

KEY PEOPLE SEEN: <u>Mark Prenovest</u>	TITLE: <u>Rx-Buyer</u>
KEY PEOPLE SEEN: _____	TITLE: _____
KEY PEOPLE SEEN: _____	TITLE: _____
KEY PEOPLE SEEN: _____	TITLE: _____
KEY PEOPLE SEEN: _____	TITLE: _____
KEY PEOPLE SEEN: _____	TITLE: _____

PRE-CALL OBJECTIVE(S): (TARGETS, PLANS, SPECIFIC GOALS, MATERIALS)
Thank him for his business and ask for continue support of Dey products.

RECAP OF VISIT: (PRESENTATIONS MADE, CUSTOMER FEEDBACK, CONCLUSIONS)
Reconfirmed product usage and thanked him for his business. Asked for continue support of Dey products. Resold the benefits of Dey products and explained why a lot of hospitals are switching to Dey products.

COMPETITIVE INFORMATION: (INCLUDING PRODUCTS USED, DOSING PROTOCOLS, PRICING)

POST-CALL OBJECTIVE(S): (I.E., PERSONNEL, MATERIALS, PHONE CALLS, DATES, ACTION PLAN)
Reinforce their reasons for choosing Dey products and ask for continue support.

DEY LABORU

DL-TX-0113743

EXHIBIT E

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Copyright 2005 The Denver Post
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The Denver Post

April 5, 2005 Tuesday
FINAL EDITION

SECTION: A SECTION; Pg. A-01

LENGTH: 639 words

HEADLINE: Police say con artist played cop Investigators say Michael T. Ricks used the guise to sexually assault women. Bail is set at \$1 million.

BYLINE: Amy Herdy Denver Post Staff Writer

BODY:

In his real job, Michael T. Ricks managed employees at Arby's, pulling whatever shift was needed.

In his imagination, and to the women he victimized, the 45-year-old former drama major was a chiropractor, a massage therapist, a physician and, now, officials say, an undercover police officer - and he used that guise to work the streets for easy prey.

Ricks, who initially faced 33 charges in Douglas County from June, including multiple counts of sexual assault and impersonation of a doctor, posted \$100,000 bond Oct. 29 and began almost immediately stalking women in Denver and surrounding areas until his arrest Monday night, police say.

"This guy is a real con artist," said Mark Fleecs, sergeant of the Denver vice unit. "We have reason to believe he has many victims of sexual assault out there, and we're hoping they come forward."

For the past few months, Fleecs said, members of the vice squad had been hearing about a man who claimed to be a cop and threatened women with arrest unless they agreed to sexual favors. Yet no one was able to provide them identifiable information until late Monday afternoon, he said.

Within hours, authorities from Denver, Aurora and Douglas County descended upon the Arby's at 4550 S. Buckley Way in Aurora and took Ricks into custody on two counts of impersonating an officer. Douglas County officials set his bail at \$1 million.

For Ricks to be impersonating a professional in order to manipulate others is nothing new to officials. In June, authorities accused Ricks of pretending to be a chiropractor and cosmetician and sexually assaulting women at clinics in Aurora and Highlands Ranch.

On March 28, Ricks entered a plea agreement with the district attorney's office that reduced his 33 charges down to two: one count of felony sexual assault and one count of misdemeanor unlawful sexual contact. He was to be sentenced June 9.

There were 10 victims in Ricks' Douglas County case, said Mike Knight, spokesman for the district attorney's

Police say con artist played cop Investigators say Michael T. Ricks used the guise to sexually assault women. Bail is set at \$1 million. The Denver Post April 5, 2005 Tuesday

office. He was charged in three felony cases and seven misdemeanor cases.

The one felony count and one misdemeanor count he pleaded guilty to March 28 encompassed all those charges, Knight said.

He does not know why Ricks was able to plead the multiple counts of that case down to two, he said.

"I don't think there were issues where the victims were uncooperative," Knight said, adding, "I'm sure if any number of the victims were adamant about not taking the plea, we wouldn't have."

As with the case of Brent J. Brents, a sexual offender whose case the district attorney's office came under fire for mishandling, Knight pointed out that current District Attorney Carol Chambers took office in January.

Police and others say that Ricks began to pose as a police officer almost as soon as he was out of jail.

One woman, who is not being named because she is a witness to crime, told The Denver Post she met him one morning in late February while ordering a sausage Egg McMuffin at McDonald's.

Ricks told her he was a police officer, the woman said, and briefly showed her a badge.

"He told me he was Denver vice and he busts prostitutes," the 28-year-old woman said.

On two occasions, she said, she had sex with him in his dark-colored Ford Explorer with tinted windows. He wore wire-rimmed glasses and was polite, she said, and although the incidents were consensual, she now feels duped.

"It's like a slap in the face," she said.

An employee at the Arby's where Ricks worked described him Monday night as "polite and a hard worker," but police say there is a sinister side to the man who is married and has a 5-month-old child.

"There's no telling what will come up on this guy," Fleecs said.

Anyone with information on the case is asked to call the Denver Police Department at 720-913-2000.

Staff writer Amy Herdy can be reached at 303-820-1752 or aherdy@denverpost.com.

LOAD-DATE: April 5, 2005

EXHIBIT F

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Copyright 2005 The Denver Post
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The Denver Post

September 9, 2005 Friday
FINAL EDITION

SECTION: DENVER & THE WEST; Pg. B-08

LENGTH: 434 words

HEADLINE: Sex predator gets 20 years to life Believed to have assaulted 10 women while posing in various roles, the 46-year-old drama grad faces more charges and must serve at least 13 years.

BYLINE: Mike McPhee Denver Post Staff Writer

BODY:

A sexual predator believed to have assaulted 10 women while masquerading as a doctor, a chiropractor, a massage therapist and others, was sentenced to 20 years to life in prison Thursday in Douglas County District Court.

Michael Ricks, 46, asked Judge Thomas Curry for leniency, suggesting that he be given probation and treatment so he could begin working with young adolescents. As two victims and their families reacted in disbelief at Ricks' request, Curry said there wasn't a chance of granting it.

"It's clear to me that you operate as two very different people - you are one person to your family and an entirely different person in the community where you carry on your activities as a chiropractor or whatever," Curry said. "I believe you have a very high risk of reoffending and that you can't be appropriately contained (as a sexual predator)."

Ricks was given the 20-year sentence after pleading guilty to one count of felony sexual assault. He received a two-year sentence after pleading guilty to one count of misdemeanor unlawful sexual contact. The sentences will be served concurrently. He must serve 13 years before becoming eligible for parole.

Darren Vahle, senior deputy district attorney, called Ricks "a good liar, a chronic liar who will say anything to get what he wants."

"He put himself into positions of power, of authority over women, then used it for his own sexual gratification," Vahle said.

One victim, who was assaulted last year when she was 18, told Curry she went to "Dr. Mike" after an automobile accident, believing he was a chiropractor and massage therapist who could relieve her pain and sore muscles. She testified that Ricks began massaging her, then told her she had internal bruising in her vagina, which required him to insert a vibrator in her.

The woman said she has lost all trust, even with lifelong friends, and is sometimes terrified to be out in public alone.

Ricks had a variety of business cards for different professions, all of which stated that he had a Ph.D. In fact, he has

Sex predator gets 20 years to life Believed to have assaulted 10 women while posing in various roles, the 46-year-old drama grad faces more charges and must serve at least 13 years. The Denver Post Se

an undergraduate degree in drama from the University of Kansas.

Ricks has fathered eight children, ages 25 years to 10 months, with six women. Two of his eldest children testified Thursday that he has been a good father and deserves treatment. Ricks said his wife was unable to attend his sentencing because she was at work.

Denver police arrested him in April on charges of impersonating a police officer and said he was threatening to arrest women unless they had sex with him. His bond was forfeited and his bail increased to \$1 million. He is to appear in Denver court Sept. 22.

LOAD-DATE: September 9, 2005